



**From:** Handy Law, LLC  
**To:** RI PUC  
**Date:** 2.26.21  
**Regarding:** Docket 5080, 2021-2023 System Reliability Procurement Three-Year Plan

We write to provide public comment on this proposed plan.

*A. Transparency*

The Company’s request that the Commission declare the cost benefit analysis for non-wires alternatives confidential and not subject to disclosure under the RI Access to Public Records Act (APRA) should be denied. The Company provides no good reason to treat any such information as confidential and there is extremely good reason not to.

One of eight principles of the National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources (NSPM) published by industry experts (including the RIPUC’s Todd Bianco) in August 2020 is to “ensure transparency.” They describe that principle as follows:

Transparency helps to ensure engagement and trust in the BCA [Benefit-Cost Analysis] process and decisions. BCA practices should therefore be transparent, where all relevant assumptions, methodologies, and results are clearly documented and available for stakeholder review and input.

Starting on page 2-7, the NSPM describes the importance of transparency in more detail:

DER BCAs require many detailed assumptions and methodologies, and they typically produce detailed results. For regulators, utilities, and other stakeholders to properly assess and understand BCAs—and therefore to ultimately ensure that BCA conclusions are reasonable and robust—key inputs, assumptions, methodologies, and results should be clearly documented in sufficient detail.

Transparent documentation helps to ensure that the approach to cost-effectiveness analysis is consistent with fundamental principles, regulatory objectives, and applicable policy goals. It also facilitates and expedites regulatory and stakeholder understanding and review of cost-effectiveness analyses.

Transparency also entails ensuring that stakeholder input allows for review and discussion of the BCA assumptions, methods, and results.

Clearly the Company’s request for confidentiality of its cost benefit analysis for non-wires alternatives will not at all “ensure transparency” as discussed in the NSPM. It would not ensure

that the “BCA conclusions are reasonable and robust” or that “key inputs, assumptions, methodologies, and results should be clearly documented in sufficient detail.” The lack of transparent documentation means that stakeholders cannot “ensure that the approach to cost-effectiveness analysis is consistent with fundamental principles, regulatory objectives, and applicable policy goals.” As a result of the lack of transparency, stakeholders cannot meaningfully understand and review the cost-effectiveness analyses. The stakeholder comment process is critical to direct the future of energy policy for Rhode Island. The request for confidentiality of a benefit cost analysis simply runs directly contrary to well-established industry standard.

This request for confidentiality aligns perfectly with the concerns stakeholders have raised about the Office of Energy Resources’ evident failure to provide transparency around its alternatives cost benefit analysis for 100% by 2030 and its evaluation of the expansion of the community net metering program. See our attached comments to the agency about the lack of transparency in both of those processes, none of which received the courtesy of any response. There is a pattern here.

What may be most concerning about the Company’s request here is that it goes further in seeking to refute the purpose of APRA at a time when that act has been stakeholders’ only means to maintain open and transparent government. APRA’s purpose “to facilitate public access to governmental records which pertain to the policy making functions of public bodies \* \* \*.” Section 38-2-1. “[T]he exemptions listed in the APRA are to be construed narrowly, ‘so as to further the legislative purpose of facilitating public access to governmental records.” In re New England Gas, 842 A.2d at 555.; citing Providence Journal Co., 616 A.2d at 1136 (quoting Hydron Laboratories, Inc., 492 A.2d at 139). Yet, the Company’s claim for confidentiality is presented this way:

For matters before the PUC, a claim for protective treatment of information is governed by the policy underlying the Access to Public Records Act (APRA), R.I. Gen. Laws § 38-2-1 et seq. See 810-RICR-00-00-1.3(H)(1). Under APRA, any record received or maintained by a state or local governmental agency in connection with the transaction of official business is considered public unless such record falls into one of the exemptions specifically identified by APRA. See R.I. Gen. Laws §§ 38-2-3(a) and 38-2-2(4). Therefore, if a record provided to the PUC falls within one of the designated APRA exemptions, the PUC is authorized to deem such record confidential and withhold it from public disclosure.

It was this firm’s APRA request in commission docket 4981, appealed 3 times and ultimately to

the Attorney General, that (finally) refuted the Division's position that it had a "common interest" with the Company that made exchanges between them eligible for a work product privilege protection against APRA disclosure. It was an APRA request to OER in the community net metering stakeholder process that revealed extensive agency interaction with the Company before the release of a cost benefit study that did not account for the system benefits caused by distributed generation and led to a (wholly unsupported) conclusion that net metering customers are subsidized by other customers. That APRA request showed that stakeholders were denied access to the consultant who expressly acknowledged agency intent to disregard stakeholder concerns. We are trying to use a similar APRA request to determine the Company's influence on OER and the consultant hired to do the cost benefit alternative analysis for the State's 100% by 2030 policy planning process, in which stakeholder concerns about cost benefit methodology and conclusions were once again entirely disregarded. The Company's effort to undermine APRA right now ought to be auspicious and is insidious.

The Company produces no good reason to keep its cost benefit analysis secret. It argues:

Appendix 3 is the Rhode Island non-wires alternative ("NWA") benefit-cost analysis model that the Company developed to more accurately assess the benefits and costs of NWA opportunities. This model is proprietary to the Company and the Company considers this model to be commercial information. National Grid would customarily not release this model to the public and its submission of Appendix 3 stems from a regulatory directive issued by the PUC via Section 1.3.B of the Least Cost Procurement Standards. Accordingly, National Grid is providing Appendix 3 to the PUC to fulfil its regulatory responsibilities. Therefore, Appendix 3 is exempt from public disclosure "if the disclosure is likely either: (1) to impair the government's ability to obtain information in the future, or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." See The Attorney General's Guide to Open Government in Rhode Island 6th Edition, p. 22. The release of Appendix 3 is likely to cause substantial harm to the competitive position of National Grid. Appendix 3 includes sensitive information and other commercial details regarding the Company's analysis of NWA opportunities. Disclosing this information to the public could harm the Company's ability to procure third-party NWA solution bids in the most cost-effective and unbiased manner and, ultimately, harm customers.

There is nothing in a cost benefit model that can rightly be considered proprietary commercial information. It is absolutely the customers' right to have transparency into the analysis of whether non wires alternatives are cost effective. The General Assembly has made public its requirement that the Company pursue least cost procurement in the context of its implementation of system reliability. R.I. Gen. Laws § 39-1-27.7. The Company's contention that any such

process must be proprietary and involve “commercial information” only indicates that it cannot be trusted to do its customers’ work as required by our general assembly. The idea that disclosing the contents of a cost benefit analysis will impair the Company’s ability to get cost effective NWA bids is unsubstantiated. In fact, in section 10 of the plan (p 82) the Company itself states: “SRP market engagement will enable third-party solution providers and vendors to more easily access available information about National Grid’s electric distribution system and SRP opportunities in Rhode Island and therefore further enable these solution providers to create, submit and develop innovative energy solutions for Rhode Island customers.”

Please reject the Company’s request for confidentiality and maintain public access to a transparent analytical process.

*B. The Proposed Performance Incentive Mechanism, While Well-Intended, Will Not Work as Intended.*

The Company’s proposal that it should be incentivized to pursue least cost procurement of system reliability gets further to the heart of our concern about this plan. The notion that the Company could possibly be paid enough to prefer non-wires alternatives to its business as usual is laughable. While it’s clearly true that the Company does not have economic interest in non-wires alternatives, the means to resolve that disinterest is not to pay them more to disregard it. The only means to resolve the conflicting interest is to provide independent administration of system reliability procurement; administration that can align with the general assembly’s mandate.

There are too many contexts where the Company and its regulators propose carrots that will purportedly lure a disinterested utility to forego its economic interests for the good of our public interest. Make no mistake, National Grid is a “public” utility by misnomer only – its interests are in profiting its shareholders, whether or not that interest is consistent with the public interest. National Grid operates the electricity transmission system in England and Wales and is the electric system operator and operates the gas system for all of Great Britain (AR p. 2). Its U.S. affiliate owns gas transmission and distribution facilities in New York, Massachusetts and Rhode Island; owns and operates electric transmission facilities in upstate New York, Massachusetts, Rhode Island, New Hampshire and Vermont; and is an electric distribution system operator in upstate New York, Massachusetts and Rhode Island. More than half of our energy bill is for the cost of managing our transmission and distribution system. National Grid reported an annual operating profit of £2.87 billion for 2018/2019 (Annual Report 2018/2019 at 26,

“AR”). That year National Grid (the parent) spent a total of £3.5 billion on energy infrastructure (AR at 30), generating a net revenue increase of 3% and increased its rate base of 9.2% (AR at 36). National Grid U.S. reported an annual operational profit of £1.724 billion that year (AR at 26), spending £2.6 billion on energy infrastructure in its United States regulated markets (AR at 36). Sixty percent (60%) of National Grid U.K.’s total revenue, and 74% of its total infrastructure investment, came from upstate “New York” and part of “New England.” National Grid partnered with Orsted to supply electricity from its offshore wind project, Revolution Wind, to Rhode Island and Connecticut and in return, National Grid Ventures (an “unregulated affiliate”) got the right to provide the transmission interconnection and service between Orsted’s project and the transmission system (AR at 39). National Grid Venture’s has now bought Geronimo Solar, a utility scale renewable energy developer, that could look to sell competing renewables into RI. National Grid’s interests in natural gas, electric system infrastructure investment and utility-scale renewables fundamentally compete with RI’s public interest in non-wires alternatives for system reliability.

That being the case, how much of a performance incentive mechanism would it take to shift the Company’s economic interest in infrastructure investment to sincerely and proactively embrace an interest in lower cost non-wires alternatives? The short answer is way too much. Indeed, the fact that the Company seeks confidentiality and APRA secrecy for its cost benefit analysis of non-wires alternatives demonstrates plainly that it prefers to hide the ball. It never really intends to turn its attention from its shareholder profits to the public interest in lowering the cost of electric service. There’s plenty of additional evidence for that conclusion as well.

It is no surprise that in section 7.5 of the proposed plan, “Analysis of System Needs,” the Company describes reviewing three specific conditions that could possibly benefit from non-wires alternatives but has yet to find any cost effective non wires solutions for these conditions. This firm has long advocated for implementation of the locational incentive that the general assembly asked for as part of Rhode Island’s renewable energy growth program. See R.I. Gen. Laws § § 39-26.6-22. RI OER recently commissioned a consultant to study policy adders in the REG program but the one adder that is specifically laid out in the statute, the locational incentive, was not even proposed for consideration. If the Company or its regulators do not believe that renewable energy can provide locational system benefit, stakeholders should see that analysis in all of its detail so they can debunk it. Yet, despite this evident disregard for non-wires alternatives, the utility continues to reap huge financial gains from making investments in our electrical system. Indeed, the utility assesses more and more of the cost of those improvements to

the same local distributed generation projects that reduce our reliance on the electrical transmission and distribution systems.

The RFP process that the Company administers for NWAs is structured in ways that discourage participation of cost-effective solutions. One example is safety scoring criteria that are inherently disadvantageous for smaller bidders, dissuading them from participating even if they have site control, development and financing opportunities that could deliver least cost, effective solutions. National Grid's RFP scoring shows this disadvantage towards smaller organizations even if they have a coordinated, certified plan for safe work protocols. There are also transparency problems with the Company's NWA bid process. Bidders must sign a non-disclosure agreement just to get the RFP. The Company hosts a Pre-Bid Meeting that is supposedly mandatory for bid submissions, but they have disregarded that requirement for their meetings and have not produced lists of participating organizations or bidders.

As the plan notes, this system reliability planning requirement was introduced in statute in 2006. It has been the subject of lots of Company and consultant work,<sup>1</sup> lots of discussion and lots of agency, stakeholder and Commission attention, but it has not resulted in many notable "non wires alternatives." OER's comments mention one proposed storage project on Aquidneck Island that was ultimately withdrawn because distributed generation projects obviated the need for it – but, just as usual, those distributed generation projects never received any compensation for the reliability benefit they provided. Here in this proposed plan, once again, we don't get a plan but merely another plan to do system reliability planning. Any resulting bid processes (if any) will be subject to the Company's double secret cost benefit analysis, as proposed. There is no plan to implement specific, cost effective non-wires alternatives presented for stakeholder and Commission review to endorse or rebut. Rhode Island cannot expect to meet its need and mandate to reduce costs and enhance system reliability in this manner.

The best way to resolve the Company's lack of incentive to procure least cost system reliability is to ensure that the Company is not responsible for our system reliability plan and does not administer our system reliability program. It's unclear how the general assembly's intent for least cost system reliability procurement can be met without such a restructuring.

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<sup>1</sup> The cost of such work is covered by the work of FTEs and is included in the current rate case under Docket 4770. (Proposed SRP at pg. 39).

C. *The Company Should Not Have Its Own Methods for Conducting Cost Benefit Analyses.*

It is clear why the Company would propose its own methodology for conducting its own cost benefit analyses, but it would be inappropriate for the Commission to approve its method. This firm was one of the many stakeholders that participated in a long and thorough expert-driven process to develop the cost benefit criteria that were laid out clearly in docket 4600. If the Company would like to change that methodology, any such changes ought to be proposed as amendments to docket 4600, after reengaging those experts and that good stakeholder group.

In section 8.2 of the proposed plan, the Company indicates that it has yet to develop its own cost benefit model for non-pipeline alternatives. It proposes to develop such a model and propose it in its 2021 SMP year-end report at which point it can begin to evaluate alternatives. Docket 4600 provides a universal methodology. There is no justification or need for a separate Company methodology. On page 57, the Company's plan states "Currently, the Company does not have a planning process defined for NPAs, which means it is not possible to identify projects where NPAs may be suitable or to put forth a solicitation to gather proposals." So, on this issue we have a purported plan that has yet to develop even a planning process. There is no more cause to delay the least cost procurement of non-pipeline alternatives that will produce system reliability.

This is not a new problem. These faulty valuation methodologies and propositions are the same that utilities have long pushed in this and other jurisdictions. An alleged net metering subsidy was the basis for the utility's attempted "access fee" proposed in Commission docket 4568. When energy stakeholders refuted that filing for its presumptions about subsidization that were not evidenced by any proper cost benefit analysis, the utility ultimately withdrew its proposal. The PUC order in that docket called for the docket 4600 process to establish a cost benefit methodology and standard for Rhode Island. Docket 4600 engaged experts and stakeholders in developing that standard, which resulted in three categories of costs and benefits, to the electrical system, to customers, and to society.

While the docket 4600 stakeholders and experts have not had full opportunity to review and correct the company's proposal to implement its own cost benefit methodology, one category is of immediate note.

3.14 Utility Interconnection Costs - The interconnection cost is the cost for physically and digitally linking the solution to the electric system. This can include upgrading the wires (e.g., with a battery storage or solar solution) or a telecommunications upgrade.

Interconnection costs will be determined on a case-by-case basis regarding the specific system need and its respective targeted NWA. This cost will generally be a capital expenditure, initially borne by the utility, prior to the commercially viable date of the NWA solution.

This attempt to account for interconnection costs as a “capital expenditure, initially borne by the utility, prior to the commercially viable date of the NWA solution” is plainly inaccurate. The Commission is very well aware of the Company policy of advance charging interconnecting distributed generation customers for any and all costs of interconnection. In fact, the Company has now taken to charging renewable energy projects interconnecting to the distribution system for the capital and operation and maintenance cost of its transmission system even though the projects do not request transmission system service or interconnection and will not participate in federal markets. Considering any interconnection cost as a utility and ratepayer borne expense is totally misleading. Continued failure to properly account for the great benefit distribution system renewable energy interconnections produce to the electrical system is deeply costly to the state of Rhode Island.

The NSPM makes it clear how important the analysis of system benefits is as part of any thorough BCA. The introduction describes the purposes of investment in DER to include “for example, reducing utility system costs, deferring capacity, providing demand flexibility, increasing reliability, reducing energy burdens for low- to moderate-income customers, managing grid power quality, and/or achieving carbon emission reduction goals.” (1-1). Most of those purposes are to address system impacts that are largely overlooked in the Company’s proposed methodology.

The NSPM summarizes the benefits: “Generally, DERs represent a critical component of the evolution of the electricity grid, allowing for a more flexible grid, enabling two-way flows of energy, enabling third parties to introduce and sell new electricity products and services, and empowering customers to optimize their end-uses and consumption patterns to lower their bills and utility costs.” *Id.* In setting out the purposes of such a BCA, the first is, “How can DERs be used to reduce utility/power system costs?” *Id.* at §1-3. The first principle of the NSPM guidance is that “DERs are one of many energy resources that can be deployed to meet utility/power system needs. DERs should therefore be compared with other energy resources, including other DERs, using consistent methods and assumptions to avoid bias across resource investment decisions.” *Id.* at Table 2-2. The manual goes on to describe how such impacts should be evaluated in detail. See also <http://www.ripuc.ri.gov/eventsactions/docket/4600page>; [http://www.ripuc.ri.gov/eventsactions/docket/4568-WED-Ex4-BeyondRewards\(11-23-15\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/4568-WED-Ex4-BeyondRewards(11-23-15).pdf);

<http://acadiacenter.org/document/value-of-distributed-generation-solar-pv-in-ri/>;  
<http://ritv.devosvideo.com/show?video=jforobsf&apg=61f109a4>.

Rhode Island's energy plan (Energy 2035) focuses on energy security as one of three priorities, together with cost and environmental sustainability. Rhode Island cannot, and will not, get to greater energy security without fully considering all the benefits distributed generation produce for our electrical system.

### *Conclusion*

Please reject the Company's claim for confidentiality of its cost benefit analysis of non-wires alternatives and assure full transparency. Ensure accurate consideration of all costs and benefits including especially the system benefits produced by distributed generation. The Company's proposal makes it clear that it cannot and will not deliver on the general assembly's mandate for least cost procurement of system reliability. Therefore, it is time to reassign responsibility for least cost procurement of system reliability to an independent entity that has no commercial interest at stake and will truly serve our State's interest in cost effective and reliable electrical service.